

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CONECTIV SERVICES, INC. )  
                                )  
Plaintiff,                 )  
                                ) C.A. No.:  
v.                            )  
                                )  
                                )  
FIDELITY & DEPOSIT COMPANY OF     )  
MARYLAND,                      )  
                                )  
Defendant                    )  
                                )

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY**

CONECTIV SERVICES, INC.         )  
                                        )  
Plaintiff,                         )  
                                       ) C.A. No.: 08C-03-017 RFS  
v.                                    )  
                                        )  
                                       )  
FIDELITY & DEPOSIT COMPANY OF     )  
MARYLAND,                         )  
                                       )  
Defendant.                        )  
                                       )

**NOTICE OF REMOVAL**

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF DELAWARE:**

Defendant, Fidelity & Deposit Company of Maryland, by and through its attorneys, Whiteford Taylor & Preston, LLC, hereby removes the above captioned case to this Honorable Court and provides notice of the same to Plaintiff. In support of the removal, the Defendant avers as follows:

1. On or about April 23, 2008, the Plaintiff's Complaint in the above captioned matter was served upon the Defendant, Fidelity & Deposit Company of Maryland. A copy of the Complaint is attached hereto and marked Exhibit "A".

2. In Plaintiff's Complaint, Plaintiff avers that it is a Delaware Corporation with a principal place of business at 800 King Street, Wilmington, Delaware. (See Exhibit "A", paragraph #1).

3. In Plaintiff's Complaint, Plaintiff avers that the only named Defendant, Fidelity & Deposit Company of Maryland, is a Maryland corporation with a principal place of business at 3910 Kenwick Road, Baltimore, Maryland.

4. The damages allegedly sustained by the Plaintiff are in excess of \$75,000.00. (See Exhibit "A", pp. 2-3).

5. The above described civil action is one in which this Honorable Court has original jurisdiction pursuant to Title 28 United States Code §1332 based upon the fact that there exists diversity of citizenship between the parties and the amount in controversy is in excess of \$75,000.00 and is accordingly one which may be removed to this Honorable Court by Notice pursuant to Title 28 United States Code §1441.

WHEREFORE, Defendants pray that the above action now pending in the Superior Court of Delaware in Sussex County be removed to this Court.

WHITEFORD TAYLOR PRESTON, LLC

*/s/ Daniel A. Griffith*

Daniel A. Griffith, Esquire (No. 4209  
1220 Market Street, Suite 608  
Wilmington, DE 19801  
(302) 482-8754  
Attorneys for Defendant

## EXHIBIT A

EFILED: Mar 26 2008 9:56 AM  
 Transaction ID 19141785  
 Case No. 08C-03-017 RFS

IN THE COURT OF LAW OF THE STATE OF DELAWARE  
 IN AND FOR SUSSEX COUNTY

CONECTIV SERVICES, INC.,

Plaintiff,

v.

C.A. No.

FIDELITY & DEPOSIT COMPANY OF  
 MARYLAND,

Serve:  
 State of Delaware Insurance Commissioner  
 841 Silver Lake Boulevard  
 Dover, Delaware 19904

Defendant.

COMPLAINT

1. Plaintiff, Conectiv Services, Inc. ("Conectiv") a Delaware corporation with a principal place of business at 800 King Street, Wilmington, Delaware.
2. Defendant Fidelity & Deposit Company of Maryland ("Fidelity") is a Maryland corporation with principal place of business at 3910 Kenwick Road, Baltimore, Maryland.
3. This matter relates to matters arising out of renovations made in 1998 to the Seaford High School in Seaford, Delaware (the "Project").
4. On or about March 13, 1998 Seaford High School (the "Owner") entered into a construction contract with W.B. Venables & Sons, Inc. ("Venables").
5. Fidelity, as surety, issued payment and performance bonds for the Project.
6. On or about April 15, 1998, Conectiv entered into a subcontract with Venables.
7. Conectiv performed its work on the Project in a timely and workmanlike manner, with the school opening on time and the HVAC system working as required by the state.
8. However, Venables failed to pay Conectiv in full for its work. As a result,

Conecav made a claim against Fidelity's payment bond for the Project.

9. On or about October 2, 2001 Conecav and Fidelity entered into a Settlement Agreement for Conecav's claim under the payment bond. A copy of the Settlement Agreement is attached hereto as **EXHIBIT A**.

10. Under the terms of the Settlement Agreement Conecav and Fidelity agreed that Conecav was unpaid in the amount of \$290,027.00 on the Project. However, this amount was subject to an offset for amounts that were alleged to be owed to the Owner due to a dispute about the type of pipe Conecav installed on the Project.

11. As of May 2007 the total unpaid amount owed to Conecav was \$249,191.00 subject to potential offsets related to the Owner's pipe claim.

12. On or about May 22, 2007 Conecav, acting on behalf of Fidelity, conducted a mediation with the owner and agreed, after consultation with counsel for Fidelity to provide the owner a credit in the amount of \$130,000 to settle the dispute related to the pipe Conecav installed on the Project.

13. On or about May 23, 2007 Conecav made demand that Fidelity pay the Owner the \$130,000.00 agreed upon at the mediation and forward the remaining balance of \$119,191.00 to Conecav. A copy of Conecav's May 23, 2007 letter is attached hereto as **EXHIBIT B**.

14. Despite its approval of the terms of the mediation settlement with the school and its clear obligations under the settlement agreement with Conecav Fidelity refused to tender payment of any sort.

15. To insure that it would not be forced to incur additional costs related to the Owner's pipe claim, on or about July 26, 2007 Conecav issued a check to the owner in the amount of \$130,000.00 to satisfy the settlement related to the pipe installation issue. A copy of

this check is attached hereto as **EXHIBIT C**.

16. In exchange for this payment from Conectiv the owner provided a General Release of All Claims in favor of Fidelity and Conectiv for work performed or materials supplied by Conectiv on the Project. A copy of the General Release of All Claims is attached hereto as **EXHIBIT D**.

17. Because Fidelity refused to honor its obligation to pay the Owner for the amounts due under the mediation settlement Conectiv remains owed a balance of \$249,191.01 under the terms of the Settlement Agreement.

18. Despite demand, Fidelity has refused to pay this outstanding balance.

19. All conditions precedent to the initiation of this action have been satisfied and/or waived.

WHEREFORE, Conectiv Services, Inc. demands judgment against Fidelity & Deposit Company of Maryland in the amount of \$249,191.01 plus court costs, attorneys' fees and any other such damages this Court may deem appropriate.

COHEN, SEGLIAS, PALLAS,  
GREENHALL & FURMAN, P.C.

By:

  
EDWARD SEGLIAS, ESQUIRE (ID No. 2822)  
1007 Orange Street, 11<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 425-5089

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CONECTIV SERVICES, INC. )  
Plaintiff, )  
v. ) C.A. No.:  
FIDELITY & DEPOSIT COMPANY OF )  
MARYLAND, )  
Defendant. )

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY**

CONECTIV SERVICES, INC. )  
Plaintiff, )  
v. ) C.A. No.: 08C-03-017 RFS  
FIDELITY & DEPOSIT COMPANY OF )  
MARYLAND, )  
Defendant ))

## **CERTIFICATE OF SERVICE**

I, Daniel A. Griffith, Esquire, do hereby certify that on this 15<sup>th</sup> day of April, 2008, a copy of the foregoing *Notice of Removal* was served via LexisNexis file and serve to the following:

Edward Seglias, Esquire  
Cohen, Seglias, Pallas, Greenhall & Furman, P.C.  
1007 Orange Street  
11<sup>th</sup> Floor  
Wilmington, DE 19801

/s/ Daniel Griffith  
Daniel Griffith (I.D. 4209)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Conetiv Services, Inc.

**(b)** County of Residence of First Listed Plaintiff New Castle, DE  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorney's (Firm Name, Address, and Telephone Number)

Edward Seglias, Esquire, Cohen, Seglias, 1007 Orange Street, 11th Floor, Wilmington, DE 19801

**DEFENDANTS**

Fidelity &amp; Deposit Company of Maryland

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Daniel Griffith, Esquire, Whiteford Taylor & Preston, 1220 Market Street, Wilmington, DE 19801

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |                                                      |                                                                                                  |
|------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question<br>(U.S. Government Not a Party)                     |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF
<input checked="" type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/>		<input type="checkbox"/> 4	<input type="checkbox"/> 4
	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 810 Selective Service
<input checked="" type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN**

(Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify) \_\_\_\_\_

6 Multidistrict Litigation

7

Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332, 28 U.S.C. 1441

**VI. CAUSE OF ACTION**

Brief description of cause:  
Breach of contract against surety arising out of construction of Seaford High School

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

5/15/08

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

Shelia A. Haff

RECEIPT #

AMOUNT \_\_\_\_\_

APPLYING IPP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.